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JUN 21 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Washington, D.C. 20554

In the matter of)
)
Review of the Commission's)
Rules Governing the Low Power)
Television Service)
)
)
)

MM Docket No. 93-114
RM-7772

COMMENTS OF THE OFFICE OF SPECIAL DISTRICTS,

JUN 21 1993

SAN BERNARDINO COUNTY, CALIFORNIA

FCC MAIL BRANCH

To: The Commission:

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June 18, 1993.

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SUMMARY

The Office of Special Districts, San Bernardino County, California, operates a grouping of translator and LPTV stations. The Districts strongly support the initiatives proposed here. With a reaffirmation of secondary status for television translators and LPTV stations, it may be possible to take the proposed liberalization further.

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COMMENTS OF THE OFFICE OF SPECIAL DISTRICTS,

SAN BERNARDINO COUNTY, CALIFORNIA

To: The Commission:

The Office of Special Districts, San Bernardino County, California ("Special Districts"), by its attorney, here respectfully submit comments in the proceeding shown in the caption above, and pursuant to the Notice of Proposed Rule Making released on April 22, 1993, 8 FCC Rcd 2770. Special Districts, in conjunction with specific, local operating districts, are the licensees of the following television translators:

Daggett Site: K15BZ, K19BS, K23BP, K35BQ, K41CY, K61AE,
K67AZ, K69FJ.

Morongo Valley Site: K14AB, K16AA, K60AY, K62AO, K64AU.

Lucerne Valley Site: K15CA, K19BT, K33DK, K41CB, K48AD,
K54AD.

Newberry Springs Site: K06IQ, K03EK, K08IA, K10IX, K12JI.

Additionally, Special Districts are licensees of low power

television broadcast stations K17CN (Daggett), K67BH (Morongo), and K68CW (Lucerne Valley). The following comments are submitted:

1. San Bernardino is the largest county in the United States, with land area of 51,960 square km, or 20,060.8 square miles.¹ Because of terrain blockage North of the San Gabriel and San Bernardino Mountain Ranges, a vast, but sparsely populated area, reaching into the Mojave Desert, never was able to partake of any direct over-the-air television reception from Mt. Wilson, or from other sites primarily intended to serve greater Los Angeles. The Office of Special Districts, pursuant to the California Government Code, Sec. 25210.1 et seq., has facilitated the development of local TV translator districts, supported by local tax revenue, and governed with participation of volunteer local boards. Although these districts and their boards are instrumentalities of state and county government, the philosophy of local governance makes it appropriate to refer to the commenting party, Special Districts, as a plural entity. The four principal sites operated by Special Districts are at Daggett, Newberry Springs, Lucerne Valley, and Morongo. With the advent of low power television broadcast service, three sites have added an LPTV channel, able to provide pre-recorded and locally originated special interest programming. With that background, we address

¹ U.S. Department of Commerce, 1990 Census of Population and Housing, Summary Population and Housing Characteristics, California (1990 CPH-1-6). Table 15. p. 219.

the Commission's specific proposals.

1. Relaxed Criteria of Application Acceptance.

2. Special Districts strongly support the implementation of a "substantially complete" standard for the low power television service. Like the Special Districts, the majority of the licensees in the service continue to operate in TV translator mode, predominantly serving rural areas. Many of these areas and their residents in recent years have undergone financial distress, affecting the ability of local government to respond to pressing needs, and affecting the ability of the private entrepreneur to maintain, let alone upgrade facilities supported with occasional donations or modest local advertising.

3. The preparation of a letter perfect application potentially involves three stages of out-of-pocket cost, involving (1) one or more computerized frequency searches; (2) the services of a telecommunications consulting engineer; and (3) regulatory counsel. Even those parties choosing to forego one or more of

skills of paperwork manufacturing. In so doing the Agency tendered an important service to rural areas.

4. The same considerations point against the stated alternative, a mid-level acceptance review checklist approach.

The merit of a substantial completeness test is that it accords to

Special Districts submit that, where the mutual consent of our prior-coordinating districts can be shown in writing, there should be no restriction on channels available for use, other than the assurance of non-interference in practice, required of TV translator licensees pursuant to Sec. 74.703(b) of the Commission's Rules and Regulations.

2. Modification of Facilities.

6. A combination of factors has resulted in the authorization of many translator and LPTV facilities that were not designed for optimum performance to the surrounding community. Virtually every new application filed in the past ten years has been prepared under emergent conditions, to meet a Commission-imposed cutoff deadline. Many new entrants to the field were not properly advised, or were otherwise not knowledgeable about good design. As experience in the field has advanced, and technology improved, better service has been possible within the same budget, provided a facility could be redesigned. The stricture, limiting minor changes to those that reduce service, only, has become a straight jacket.

7. The present minor change restriction harkens from the reconsideration of the original final rules for low power television.² At that time the Commission was backlogged with more than 8,000 applications, Id. para. 54. The severity of the minor change definition, while not rationalized expressly in this

² Memorandum Opinion and Order (Reconsideration), 53 RR 2d. 1267 (1983), para. 46.

manner, appears to have grown in part out of the Commission's concern over numerous applications being made with an arbitrarily selected pair of geodetic coordinates, but with no actual effort to determine site availability. Applicants frequently would file with the nominal site, and amend later with an actual one. This abuse, aside from the deficiencies of candor being exhibited, flooded the Commission with ghost applications that, if they ever did amount to service to the public, necessitated two staff reviews, for the faked coordinates, and later for the amended ones. The minor amendment stricture put the hammer to this practice, by limiting permittees to no more service than that proposed initially at the phantom site. This problem long since has been corrected by other means, notably with the action, the following year, to require representations of contact with a site owner.³ With the benefit of perfect hindsight, the minor change restriction well might have been softened as early as that juncture, but the liberalization now proposed is most welcome.

8. An initial question is, Must there be any restriction on technical amendments at all? A comparison with rules for full service television would suggest that there must be, but perhaps less restrictively than proposed. In full service television, stations operate within an allotment to a specified community, and a change of that named community, or of output channel is treated as major, Sec. 73.3572(a)(1) of the Rules. Derivatively, the

³ Report and Order, 57 RR 2d 234 (1984).

technical rules limit the television operator to a transmission plan (principally site location and effective radiated power) that delivers a city grade, or very good, signal over the entire community to be served, Sec. 73.685 of the Rules.⁴ In 1984 the Commission abolished an additional restriction, that formerly clasified as major any change of 50 per cent or more in the service area.⁵

9. Low power television operates without a table of allotments, on a first-come first-served basis. Applicants are reviewed in accordance with predicted interference standards, and if they are predicted not to interfere and are otherwise qualified they are granted. Changes likewise must be predicted not to interfere and, of course, must not interfere in practice. The Commission now has extensive experience with this regime, it works well, and it is efficient because it rewards the ingenuity of applicants in finding facilities that will work at close spacings.

10. Compared with full service TV, the problem is that low power service has no regulatory nexus with a named community or

⁴ Nominally the Rules also limit full service TV antenna systems to a directivity of no more than 10 dB, Sec. 73.685(e). But this has come to be little more than a reporting mechanism, through waiver requests, for example to enable use of a mountain-side location where greater suppression is needed to avoid ghosting.

⁵ First Report and Order (Dk. 83-1377), 56 RR 2d 941 (1984).

service area.⁶ In concept, some major change restriction is needed to prevent a permit issued for Calxico, CA, from being amended to a site near Sacramento.

11. However, the Commission's proposed solution is too restrictive. The bounded area proposal would enable a permittee to change the direction of a directional antenna, anywhere around the rim of the wheel, where the directional pattern is the spoke. However, there are numerous instances where service can be enhanced by taking an omnidirectional antenna, and replacing it with a directional one. The Commission's solution does not permit this to be treated as a minor change. In other instances, an applicant may be ready to upgrade in power, but the bounding circle forbids any increase that enhances coverage in all directions. In still other instances, a downtown applicant might find it efficient to move up the hillside, and radiate back to the population, yet the back-lobe transmissions further up the unpopulated hillside would violate the bounding circle, and so frustrate the implementation of optimum service.

12. Such restrictiveness seems no longer necessary or appropriate. But how to deter the Calxico/Sacramento abuse? Special Districts submit that the Commission should divide proposed minor changes into two groups: (1) site moves; and (2) all other transmission changes. There should be no predetermined

⁶ In low power television the name of the community, chosen by the applicant, is strictly a matter of convenience, and has no apparent legal significance.

restriction on non-site changes at all, on the same channel, provided no site move greater than 200 meters is involved. That way, applicants would be free to increase tower height or power, directionalize or re-directionalize, only subject to the requirements that predicted and actual interference be avoided. In this way, migration is deterred by retention of the same site. The bounding circle should be applied to analyze site changes in excess of 200 meters, only.

13. For this proposal to be effective, applicants could not be permitted to make multiple minor change amendments, first a "free" technical upgrade, and second a site move within the new bounded contour. Instead, the Commission should provide that only one "minor" change, as newly defined, would be permitted within a single license term, unless a request for waiver is submitted, with a showing that all changes considered, the area and population being served substantially overlaps with the area and population of the original authorization.⁷

14. A final housekeeping detail needs to be mentioned. The "no increased service" limit of 1983 was added on, while the enumerated criteria triggering a major change were kept in effect, Sec. 73.3572(a)(1) subparagraphs (i) through (v). If the approach advocated in the two preceding paragraphs is not adopted, and the bounding circle is adopted as proposed, the Commission should take

⁷ Displacement relief, and channel changes, would be treated no differently, as between the Commission's proposal and the modification urged here.

the opportunity to rely on that alone, and to abolish the arbitrary restrictions on changes of (ii) antenna; (iii) height; (iv) location; and (v) power.⁸

3. Call Signs.

15. Special Districts support the authorized use of four Roman letters as a call sign for translator and LPTV stations. With this reform, in all likelihood, the districts would choose to denominate their low power television services in this manner, while leaving the numerous translator designators as they are. We perceive no reason to place these valuable community LPTV facilities under a new regime of heavy-handed operating and program content rules, as a price extracted for using a different call sign, and so strongly advise against "Option 1" in the proposal.

4. Other Matters.

16. The Notice does not explore the cogent reasons that application volume has fallen off. Backlogs also have declined with volume, and not insignificantly through the diligence and hard work of the Low Power Television Branch. We take this opportunity to thank the staff for its heroic endeavors to whittle down the pile. Volume has declined because many of the most desirable frequencies have become exhausted. It has declined administratively, because of the advent of filing fees (from which

⁸ As discussed, the bounding circle is so restrictive in practice that a power increase, standing alone, will not be possible in any event.

the Special Districts, as government entities are exempt), a limit of five applications to a window, and the site availability showing previously analyzed.

17. While it is beyond the express scope of the Notice, we suggest that the new environment well warrants certain further liberalization. Filing windows can be set on a regular basis, for example at the end of each calendar quarter. This would assist Special Districts, which must plan and budget far in advance. That is, it now is apparent that the freeze, to which filing windows are an exception, no longer is needed as a dike against the floods. Windows are needed only as a means of according cut-off protection.⁹

18. The Commission also should take this opportunity to announce that it means what it says, in the rules, in the express terms of the application, and in the conditions on the permit, when it designates these authorizations as secondary. Secondary service, on a pre-emptible non-interference basis, is spectrally efficient because it allows for spectrum re-use, with a minimum of regulation. It would be a shame if this approach did not yield the expected benefits, because it was never tried. Too often, the

⁹ Windows at times are explained as a means of controlling the Commission's work load. However, the Agency has no control over the number who will show up at any window. The "surprise" announcement of a window never has succeeded in reducing volume, while it does seem to create certain hardship and unfairness. Now that volume is manageable, windows should be regularized to each quarter. Thereafter, if work load problems re-emerge, the Commission can announce, hopefully well in advance, that it needs to skip one or more windows.

Commission has gone in the opposite direction, imposing restrictions as though LPTV were not secondary or might not be in the future. This has happened at a sacrifice of service to the public. Particularly unfortunate is the excessive and unneeded preclusion of low power television, within 100 miles of expected Advanced TV service in urban areas. A commitment to secondary service, by the Commission and the licensees, if adhered to in all seriousness, would render this harsh preclusion unnecessary.¹⁰

19. Finally, and related to this, Special Districts strongly support the determination not to increase LPTV and translator power limits. The idea of such an increase, making these facilities harder to distinguish from full service TV, even if seriously proposed, could have the effect of jeopardizing the core concept of secondary service, on which future liberation can and should be built. Higher power also pushes against the tide of history. It is likely that digitized Advanced TV will require greatly reduced power limits, that it will be a type of "low power" television service. The experience of innovative channel use in LPTV, particular for co-sited facilities, already has

¹⁰ This preclusion is explained as needed in case the Commission finds itself unable or unwilling to close down LPTV stations to make way for Advanced TV. This rationale is impossible to reconcile with the long-term plan which calls for the Commission, in the next Century, to demand the return of existing NTSC channels, including, for example, the authorizations on Mt. Wilson, probably the most valuable and productive television franchises the world has ever known. It is ironic that the Commission can enunciate this plan in all seriousness, while fearing that it might at the same time be pushed around by a few LPTV operators.

yielded benefits in the design of ATV. A liberalized LPTV service may continue to offer valuable direct experience, as we see the transformation of over-the-air television in the years to come.

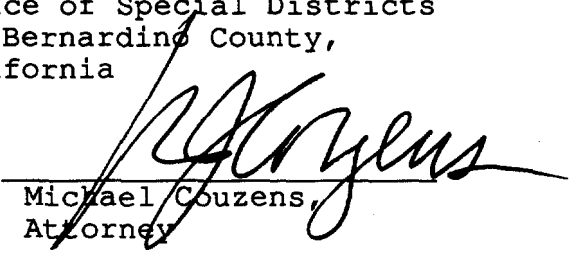
4. Conclusion.

Special Districts commend the Commission for this initiative. As set forth above, we believe that it could impart some tangible benefits to the service providers and the public. Indeed, within the confines of the subject matter, and with a reaffirmance of secondary service, the Commission can take it a step further.

Respectfully submitted,

Office of Special Districts
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